



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-051, C-570-052]

Certain Hardwood Plywood Products from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Circumvention Determination and Notice of Amended Final Circumvention Determination Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 21, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Shelter Forest International Acquisition Inc., et al. v. United States*, Consol. Court no. 19-00212, sustaining the Department of Commerce (Commerce)'s first remand redetermination pertaining to the anti-circumvention determination for the antidumping and countervailing duty orders on certain hardwood plywood products (plywood) from the People's Republic of China. In the underlying inquiry, Commerce originally found that plywood with face and back veneers of radiata and/or agathis pine that: (1) has a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types – urea formaldehyde, polyvinyl acetate, and/or soy (inquiry merchandise) was circumventing the orders, and was, therefore, included in the scope of the orders. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's original anti-circumvention determination, and that Commerce is amending the anti-circumvention determination to find that inquiry merchandise is not circumventing the orders, and, therefore, is not included in the scope of the orders.

DATES: Applicable July 31, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of

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Background

On November 29, 2019, Commerce found inquiry merchandise to be circumventing the scope of the *Orders*, and that, therefore, such merchandise should be included in the scope of those *Orders*.¹ A number of foreign producers/exporters and U.S. importers, including Shelter Forest International Acquisition, Inc. (Shelter Forest) *et al.*, IKEA Supply AG, Shanghai Futuwood Trading Co., Ltd. *et al.*, and Taraca Pacific, Inc. *et al.*, appealed Commerce's *Final Anti-Circumvention Determination*. On February 18, 2021, the CIT remanded the *Final Anti-Circumvention Determination* to Commerce and directed that Commerce: (1) explain why it is reasonable to require evidence of the actual TSCA or CARB label adhered to the product; (2) address a variety of evidentiary issues related to the composition of the glue used to produce the inquiry merchandise; and (3) accept, and consider, three submissions which either contained a translation error, was received late in the process, or contained new legal argument.² Commerce complied with the Court's remand and accepted the identified submissions.

In its final remand redetermination, issued on May 10, 2021, Commerce found that additional information submitted pursuant to the CIT's *Remand Opinion and Order* demonstrated that Shelter Forest sold inquiry merchandise prior to December 8, 2016, and thus inquiry merchandise was commercially available prior to the initiation of the investigation (*i.e.*, was not later-developed merchandise). Therefore, on remand, Commerce determined inquiry

¹ See *Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 82 FR 513 (January 4, 2018) (collectively, *Orders*); see also *Certain Hardwood Plywood Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 FR 65783 (November 29, 2019) (*Final Anti-Circumvention Determination*).

² See *Shelter Forest International Acquisition Inc., et al. v. United States*, Consol. Court No. 19-00212, Slip Op. 21-19 (CIT February 18, 2021) (*Remand Opinion and Order*). The CIT further ruled that if, on remand, Commerce continues to reach an affirmative determination, Commerce must reconsider or further explain the cash deposit rates of the plaintiffs, amend the effective date of the affirmative determination, and notify the International Trade Commission of its determination.

merchandise was not circumventing the *Orders*, and is not included in the scope of the *Orders*.³

In light of this finding, Commerce found it unnecessary to address the remaining directives by the CIT. The CIT sustained Commerce's final redetermination.⁴

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's July 21, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Anti-Circumvention Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Anti-Circumvention Determinations

In accordance with the CIT's July 21, 2021, final judgment, Commerce is amending its *Final Anti-Circumvention Determination* and finds that inquiry merchandise is not circumventing the *Orders*, and that the scope of the *Orders* does not include the products addressed in the *Final Anti-Circumvention Determination*.

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for the inquiry merchandise. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate any unliquidated entries of inquiry merchandise entered for consumption on or after

³ See Final Results of Redetermination Pursuant to Court Remand: *Shelter Forest International Acquisition Inc., et al. v. United States*, Consol. Court No. 19-00212, Slip Op. 21-19 (CIT February 18, 2021) dated May 10, 2021 at 31. The CIT made additional findings, but Commerce was not required to address these other findings because they became moot as a result of the Shelter Forest determination.

⁴ See *Shelter Forest International Acquisition Inc., et al. v. United States*, Consol. Court No. 19-00212, Slip Op. 21-90 (CIT July 21, 2021).

⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

September 18, 2018, without regard to antidumping and countervailing duties and to lift suspension of liquidation of such entries.

At this time, Commerce remains enjoined by CIT order from liquidating entries that were entered, or withdrawn from warehouse, for consumption during the period September 18, 2018, through December 31, 2020, for the following:

(1) imported by MJB Wood Group, Inc. (also known as MJB Wood Group, LLC) and:

- exported and produced by Lian Yungang Hong Yang Wood Industry Co. Ltd.;
- exported by Suqian Yaorun Trade Co., Ltd. and produced by Pizhou Jiangshan Wood Co., Ltd.;
- exported and produced by Foothill LVL and Plywood (Linyi) Co., Ltd.;
- exported by China Link International (Huai'an) Co., Ltd. and produced by Lianyungang Ruixiang Wood Industry Co., Ltd.; or
- exported and produced by Linyi Welling Wood Industry Hi-Tech. Co., Ltd.;

(2) imported by Taraca Pacific, Inc. and:

- exported by Linyi Chengen Import and Export Co., Ltd. and produced by Linyi Dongfangjuxin Wood Co., Ltd.;
- exported by Lianyungang Yuantai International Trade Co., LTD. and produced by Linyi City Lanshan District Fuerda Wood Factory;
- exported and produced by Linyi Linhai Wood Co., Ltd.;
- exported and produced by Linyi Glary Plywood Co., Ltd.; or
- exported by Shandong Qishan International Trading Co., Ltd. and produced by Linyi Tuopu Zhixin Wooden Industry Co., Ltd.;

(3) produced and/or exported by Xuzhou Shelter Import & Export Co. and Shandong Shelter Forest Products Co., Ltd.

These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: July 22, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.
<FRDOC> [FR Doc. 2021-16081 Filed 7-27-21; 8:45 am]

<BILCOD> BILLING CODE 3510-DS-P

[FR Doc. 2021-16081 Filed: 8/5/2021 8:45 am; Publication Date: 8/6/2021]